

LONG-TERM CONTRACT FOR WILDLIFE HABITAT INCENTIVES PROGRAM

Contract No.: _____
Program: _____
State: _____
County: _____

PART I - Participant(s)

(1) _____
(name) (address)

(2) _____

Contract Period: from _____ to _____

General description of land unit (including location and acreage):

PART II--Terms and Conditions

Each of the undersigned and above-named participants hereby agrees to participate in this NRCS cost-share program and by his/her participation agrees to all of the provisions of this contract and agrees to all of the regulations issued by the Secretary of Agriculture governing the program which are hereby made a part of this contract: hereby agrees E (1) to carry out on the land unit as shown in Part I hereof, land adjustments, cropping or grazing practices, and conservation practices in conformity with and as shown in the attached plan schedule of operations, which is hereby made a part of this contract, according to the time schedule conservation treatment and in accordance with the specifications and other special program criteria obtained from the local field office of the Natural Resources Conservation Service, (2) to forfeit all rights to further payments or grants under the contract and refund to the United States or the conservation district, all payments or grants received thereunder upon violation of the contract as shown in Attachment A which is hereby made a part of this contract, at any stage during the time that the participant has control of the farm if the Secretary or the conservation district determines that such violation is of a nature as to warrant termination of the contract or to make refunds or accept such payment adjustments as the Secretary or the conservation district may deem appropriate if he determines that the participant's violation does not warrant termination of the contract, and (3) upon transfer of the participant's right and interest in the farm or ranch during the contract period to forfeit all rights to further payments or grants under the contract and refund to the United States or the conservation district all payments and grants received thereunder unless the transferee of the farm or ranch agrees with the Secretary or the conservation district to assume all obligations of the contract. (4) Special provisions are included and are hereby made a part of this contract. (5) All practices in the Plan/Schedule of operations will be maintained for the life of the contract.

PART III--Participant(s) Signature (s)

Date: _____

(1) _____ (3) _____
(signature for tax purposes) (social sec # or tax ID #)

(2) _____ (4) _____
(signature) (signature)

PART IV Approval

By: _____ Date: _____
(contracting officer)

REPRODUCE LOCALLY. Include form number and date on all reproductions.

NRCS-LTP-2 (WHIP) (Special Provisions)

Form Approved OMB No. 0578-0013 (10/98)

See NRCS-LTP-2 for Privacy Act and Public Burden Statements

U. S. DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

SPECIAL PROVISIONS TO FORM NRCS-LTP-2 WILDLIFE HABITAT INCENTIVES PROGRAM AGREEMENT

1 DEFINITIONS

All words and phrases, unless the context of subject matter otherwise requires, shall have the meanings assigned to them in the regulations governing the Wildlife Habitat Incentives Program which are found at 7 CFR Part 636.

2 RESTRICTIONS ON MITIGATION ACTIVITIES

WHIP funds cannot be used for mitigation of any kind, or on any land designated as converted wetland according to 7 CFR Part 12. Such lands can be included in a WHIP cost-share agreement, however cost-share funds cannot be expended on those acres.

3 AGREEMENT

A The participant agrees:

- (1) To place eligible land into the WHIP for the period identified in the Wildlife Habitat Development Plan and to establish such practices according to the implementation schedule therein. Once the NRCS-LTP-2 is signed by all parties, practices may be established in advance of the scheduled establishment time at the discretion of the participant. At least one essential practice must be commenced within the first 12 months of the agreement and all cost-share practices should be completed at least two years before the expiration date of the cost-share agreement;
- (2) To comply with the terms and conditions of the Wildlife Habitat Development Plan (WHDP) and/or attachments to the WHDP, including the operations and maintenance agreement that may extend beyond the length of the cost-share agreement. The State Conservationist will establish an effective lifespan for each wildlife practice. Participants will be responsible for certain operations and maintenance activities throughout the practice lifespan and are generally not eligible for cost-share payments for a practice after such practice enters the operations and maintenance period. Practice lifespans shall be no longer than 10 years beyond the length of the cost-share agreement;

- (3) To establish, maintain, and replace practices as agreed to in the Wildlife Habitat Development Plan;
- (4) Not undertake any action on land under the participant's control which tends to defeat the purposes of this cost-share agreement, as determined by NRCS;
- (5) To secure all needed local, State and Federal permits prior to commencing the restoration of the designated areas;
- (6) If, during the construction of any practice, a previously unidentified archaeological or historic site(s) is encountered, the participant shall discontinue work in the general area of the site(s) and notify the NRCS immediately; and
- (7) To provide NRCS or its agent access to WHIP acreage to monitor the effectiveness of the practices during the agreement period.

B NRCS agrees, subject to the availability of funds, to:

- (1) Share the cost with owners and operators of establishing wildlife habitat development practices, or an identified unit thereof, as agreed to in the WHDP;
- (2) Provide for technical assistance to successfully establish the desired wildlife habitat and to meet the goals and objectives of the program.

4 PAYMENTS

A Subject to the availability of funds, cost-share payments shall be made available upon a determination by NRCS that an eligible practice, or an identifiable unit thereof, has been established according to the appropriate standards and specifications provided in the WHDP.

B NRCS will make cost-share payments to the participant at cost-share rates specified in the cost-share agreement for the actual amount or extent determined after work is performed.

5 VIOLATIONS, DISPUTES, AND APPEALS

A **A violation** is the participant's failure to comply with any or all of the terms and conditions of this agreement, including, but not limited to the failure:

- (1) to implement practices as scheduled in the WHDP;
- (2) to meet specifications for establishing practices:

- (3) to maintain in a satisfactory condition all cost-shared practices; or
- (4) of a practice(s) because of circumstances within the control of the participant. If the participant removes the cause for noncompliance, a violation can be avoided.

B Other violations include, but are not limited to:

- (1) Destruction of a practice established under the terms of the cost-share agreement without the approval of NRCS or failure to apply compensatory treatment for the destroyed practice as agreed to by NRCS.
- (2) False application for payment.

C If NRCS makes an adverse determination, the applicant or participant shall be entitled to a review of that adverse determination in accordance with the appeal procedures found at 7 CFR part 614 or any successor provisions.

6 ERRONEOUS REPRESENTATION AND SCHEME OR DEVICE

A A participant who is determined to have erroneously represented any fact affecting a determination with respect to this cost-share agreement and the WHIP regulations, adopted any scheme or device which tends to defeat the purposes of this program, or made any fraudulent representation with respect to this agreement, will not be entitled to payments or any other benefits made in accordance with this agreement and the participant may be required to refund all payments received by such participant, plus interest, with respect to this agreement.

B Refunds determined to be due and owing in accordance with this agreement will bear interest at the Current Value of Funds Rate published annually in the *Federal Register* by the United States Department of Treasury.

C In addition to the provisions of paragraph 6A of these Special Provisions, the participant may be subject to civil or criminal liability under any applicable statutes, including but not limited to 18 U.S.C. 268, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

7 NOTIFICATION OF CHANGES TO TERMS AND CONDITIONS OF THE COST-SHARE AGREEMENT

NRCS agrees that, if any changes of any terms and conditions of this cost-share agreement are necessary, NRCS will notify the persons signing the NRCS-LTP-2 of such change and such person will be given 30 days from the date of notification in which to agree to the revised terms and conditions or to terminate the agreement. The participant agrees that failure to notify the NRCS within the 30 day period may constitute agreement to the revised terms and conditions.

8 CORRECTIONS

NRCS reserves the right to correct all errors in entering data or in the results of computations in the cost-share agreement.

9 TERMINATION OF COST-SHARE AGREEMENT

A NRCS may terminate this agreement if a participant:

- (1) violates the terms and conditions of this agreement, or
- (2) transfers ownership or control of land subject to this agreement and the transferee refuses to assume the obligations of this agreement with respect to the transferred acreage.

B If NRCS terminates this agreement, then NRCS may require such participant:

- (1) to refund in whole or in part, with interest, cost-share payments received under this agreement; and
- (2) to reimburse any costs and expenses incurred by NRCS in the implementation, enforcement, or termination of this agreement.

C If NRCS determines that the nature or extent of the participant's action does not warrant termination of the agreement, the NRCS may require the participant to accept adjustments in future cost-share payments, as determined appropriate by NRCS. NRCS may consider a participant's failure to accept such adjustments as a reason to terminate the agreement.

10 JOINT LIABILITY

All participants who sign this agreement shall be jointly and severally liable for compliance with its terms and conditions, including the terms and conditions of the WHDP and/or attachments to the WHDP.

11 EFFECTIVE DATE AND MODIFICATIONS TO COST-SHARE AGREEMENT

A Changes may be made in this cost-share agreement through modifications that are agreed to by the participant(s) and NRCS.

B The WHIP cost-share agreement is effective when signed by the participants, and NRCS. Except as otherwise determined by NRCS, the agreement may not be revoked unless by mutual agreement between the parties.

- C** In the event that a statute is enacted during the period of this agreement which would materially change the terms and conditions of this agreement, the NRCS may require the participants to elect between acceptance of modifications in this agreement consistent with the provisions of such statute or termination of this agreement.

12 CIVIL RIGHTS REQUIREMENTS

U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientations, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's TARGET center at (202) 720-2600 (voice and TDD).

To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326 W, Whitten Building, 14th and Independence Avenue, SW, Washington, D.C. 20250-9410 or call (202) 720-5964 (voice or TDD). USDA is an equal opportunity provider and employer.

13 DRUG-FREE WORKPLACE CERTIFICATION

By signing this cost-share agreement, the participant(s) certifies that he/she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance while conducting any activity associated with this cost-share agreement. This certification is a material representation of fact upon which reliance was placed when the agency determined to award this cost-share agreement. If it is later determined that the participant(s) knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 et seq.; 7 CFR Part 3017, Subpart F, Section 3017.600) NRCS, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

14 COST-SHARE AGREEMENT SUPPLEMENT

- A** It is further agreed that _____ is the participant who will carry out the practices and treatment for which cost-share payments will be made. All cost-share payments for restoration practices shall be made in accordance with the division of shares provided in the WHDP. Application for Payment, NRCS-FNM-141, shall be signed by

_____.

- B** It is further agreed that modification documents shall be signed in the name of

_____ by _____.

15 REGULATIONS TO PREVAIL

The regulations in 7 CFR Part 636 for the WHIP are incorporated herein. In the event of a conflict between these regulations and the terms of this Appendix, the provisions of the regulations will prevail.

16 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS - PRIMARY COVERED TRANSACTIONS

By signing this cost-share agreement, the participant(s) certifies that to the best of his/her knowledge and belief that he/she:

- A** is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- B** has not within a three-year period before the approval of this agreement been convicted of or had a civil judgment rendered against him/her for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, state or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- C** is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph B of this section; and
- D** has not, within a three-year period before the approval of this agreement, had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the applicant is unable to certify to any of the statements in this section, such prospective applicants shall attach an explanation to this agreement.